

REGULATIONS FOR THE DESIGNATION OF SCENIC ROADS AND ALTERATIONS OF TREES AND STONE WALLS THEREON

SECTION 1 STATUTORY PROVISION

These regulations have been duly adopted by the Newton Planning and Development Board as of _____, 2010 to implement its duties under the provisions of the “Scenic Road Act,” M.G.L. Chapter 40 Section 15C. M.G.L. Chapter 40 Section 15C prohibits the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, within the public right-of-way of a scenic road without the prior written consent of the Planning Board.

SECTION 2 PURPOSE

The Scenic Road Act governs the cutting and removal of trees and stone walls during repair, maintenance, reconstruction or paving of roads by any entity, public or private, for the purpose of providing protection to the environmental, aesthetic and historical values of the City’s roads. The Newton Planning and Development Board has adopted these regulations to ensure that:

- A. Ways will be recommended for designation as scenic roads based on stated criteria;
- B. Ways so designated will not be altered without following proper procedures and without adherence to proper considerations

SECTION 3 DESIGNATION OF SCENIC ROADS

Scenic roads may be designated by majority vote of the Board of Aldermen if such action has been requested or recommended by the Planning Board, Conservation Commission, or Historical Commission. Prior to making such a request or recommendation, the Planning Board shall hold a public hearing on the petition, notifying the Board of Aldermen, the Tree Warden, the Conservation Commission, and the Historical Commission and advertising twice in a newspaper of general circulation; the first advertisement at least fourteen (14) days prior to the date of the public hearing.

Notification of the public hearing shall also be sent to:

- A. Owners of property having frontage along the proposed scenic road;
- B. The Newton Department of Public Works;

- C. The Massachusetts Department of Transportation, if applicable; and
- D. All utility companies or other such parties that have or propose utility installations within such road.

Scenic road designations shall be effective as of the date of the Board of Aldermen's action. Any work on any portion of the right-of-way of a scenic road, which was not physically commenced at the time the road was designated as a scenic road, shall conform to these regulations.

**SECTION 4 CRITERIA FOR THE PLANNING BOARD'S
RECOMMENDATION THAT A ROAD BE DESIGNATED AS A
SCENIC ROAD** (any or all of the following shall be considered)

- A. The trees within or adjoining the right-of-way have exceptional value
- B. The trees within or adjoining the right-of-way are part of vistas, frame a distant view, or make an important contribution to the character of the vicinity
- C. There are stone walls or other outstanding natural or man-made features within or adjoining the right-of-way
- D. If the road were altered, the change would likely destroy the exceptional scale or proportion of natural or man-made features within or adjoining the right-of-way

SECTION 5 DEFINITIONS

“Cutting and removal of trees” shall mean the cutting down of any tree protected by this regulation and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a tree so protected, including, but not limited to, excessive or improper pruning, except as exempted in Section 6.1.

“Repair, maintenance, reconstruction, or paving work” shall mean any work done within the right-of-way by any person or agency, public or private including:

- A. Sidewalk construction or alteration;
- B. Driveway construction or alteration;
- C. Underground utility installation or alteration;

D. Overhead utility installation or alteration;

E. Routine maintenance for any of the above.

“Road” shall mean the entire right-of-way of a vehicular traveled right-of-way including any necessary appurtenances including bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, but not intersecting streets. The right-of-way includes the area on and within boundaries of the public way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown otherwise.

“Stone walls” shall mean assemblages of stone not exempted in Section 6.2.

“Tearing down or destruction of stone walls” shall mean the destruction of stone walls along a public way. Temporary removal and replacement of stone walls at the original location with the same materials shall not be considered “destruction” if the City’s Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced.

“Trees” shall mean any woody plants that normally grow to a mature height greater than 18 feet (18’) and trunk diameter greater than six inches (6”) at DBH.

SECTION 6 ACTIONS EXEMPT FROM PUBLIC HEARINGS AND APPROVAL

6.1 Tree Removal

The procedures of these regulations shall not apply if:

- A. Emergency work is determined by the Commissioner of the Department of Parks and Recreation, in consultation with the Commissioner of the Department of Public Works, to be necessary to protect health, property and safety prior to possible Planning Board consent;
- B. The tree limbs to be cut have a diameter of less than four inches (4”);
- C. The tree roots to be cut have a diameter of less than two inches (2”);
- D. As determined by the City Tree Warden, the tree or the limbs to be cut are dead or damaged;

- E. As determined by the Planning Board, sufficient evidence has been provided, by the applicant, to document that the trees' trunks are not within the road right-of-way.

6.2 Stone walls

The procedures of these regulations shall not apply if:

- A. The stone wall contains either less than one (1) cubic foot of wall material above grade at the lower foot of the wall per linear foot or the stone wall is less than ten feet (10') in length;
- B. As determined by the Planning Board, sufficient evidence has been provided, by the applicant, to document that the stone wall is not within the road right-of-way.

SECTION 7 PROCEDURES

7.1 Filing

Any person, organization, state or municipal agency seeking the consent of the Planning Board under M.G.L. Ch. 40, Section 15C (the Scenic Road Act) regarding the cutting or removal of trees or the tearing down or the destruction of stone walls, or portions thereof, shall file a request with the Planning Board together with the following:

- A. Text identifying the location of the proposed action in terms enabling the readers to locate it with reasonable specificity on the ground without need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
- B. A plan showing the location of the proposed work in relation to the street right-of-way, curb line, and any sidewalks that may exist or be proposed.
- C. A statement of the purpose, or purposes, for the changes proposed;
- D. Except for City agencies, an application fee equal to fifty dollars (\$50) plus the cost of advertisements;
- E. Any further explanatory material useful to adequately inform the Planning Board.

7.2 Notice

The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Board of Aldermen, the Conservation Commission, the Historical Commission, the City Engineer, the Tree Warden, the City Department of Public Works, and the owners of all lots within 100 feet of the proposed action.

A sign at least 2' x 2' containing the same information as the public hearing notice must be prominently posted by the applicant at the location of the proposed work.

7.3 Timing of Notice

The first publication of the notice shall be at least 14 days before the hearing, and the last at least seven days prior to the hearing.

7.4 Timing of Hearing

The Planning Board shall hold a public hearing within 30 days of the Planning Board meeting at which a properly filed request is received.

7.5 Timing of Decision

The Planning Board shall make a decision on the request within 21 days of the closing of the public hearing.

7.6 Tree Warden

Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden, or vice versa. The Planning Board decision shall contain a condition that no work shall be done until the applicant complies with all applicable provisions of the Public Shade Tree Law, M.G.L. Ch. 87.

7.7 Historic District Commissions

Whenever feasible, the Planning Board hearings shall be held in conjunction with those held by one of the City's Local Historic District Commissions acting under City Ordinance Section 22-40 and M.G.L. Ch. 40C. The consent of the Planning Board to a proposed action shall not be

regarded as inferring consent by the Local Historic District Commission, or vice versa. The Planning Board decision shall contain a condition that no work should be done until the applicant complies with all applicable provisions of City Ordinance Section 22-40 and M.G.L. Ch. 40C.

SECTION 8 DECISION CRITERIA

The Planning Board's decision on any application for proposed action affecting scenic roads shall be based on consideration of the following:

- A. The degree to which the proposed action would adversely affect the scenic and aesthetic values upon which the road designation was originally based;
- B. The necessity of the proposed action in terms of protecting public safety, welfare or convenience;
- C. Compensatory actions proposed, such as replacement of trees or walls;
- D. The availability of reasonable alternatives to the proposed action that could reduce or eliminate anticipated damage to trees or stone walls;
- E. Whether the proposed action would compromise or harm other environmental or historical values; and
- F. Whether the proposed action is consistent with previously adopted City plans and policies.

SECTION 9 DESIGN GUIDELINES

9.1 Stone walls

Reconstruction of any stone wall shall meet the following guidelines:

- A. Stone from existing walls shall be used to the greatest extent possible rather than importing stone;
- B. The character of the replacement wall shall be as consistent as possible with that of the stone wall that was removed.

9.2 Driveway construction or reconstruction

The construction of a new driveway or the reconstruction of an existing driveway along a scenic road shall meet the following guidelines:

- A. The construction or reconstruction of a driveway shall meet the standards required by the City Zoning Ordinance Section 30-19;
- B. Stone wall opening for driveways shall not exceed the driveway width by more than a total of four feet (4'), and by not more than two feet (2') in width on each side of the driveway, unless greater width is necessitated for compliance with other regulations;
- C. No driveway shall be located so as to require removal of a tree having trunk diameter exceeding eight inches (8") measured at 4 ½ feet from the ground unless there is no less damaging feasible alternative;
- D. Driveways shall be located so as to minimize cut and fill within the right-of-way so as to preserve existing vegetation;
- E. Not more than one driveway curb cut serving a single- or two-family dwelling shall be allowed onto a scenic road unless the Planning Board finds more than one to be justified by special circumstances such as unusually long frontage or a shared driveway.

9.3 Trees

Unless excluded by the decision of the Planning Board pursuant to Section 8 Decision Criteria, any cutting and removal of trees shall be subject to provisions substantially parallel to those specified for "protected trees" under Chapter 20 Sections 31 through 39, the Newton Tree Preservation Ordinance, administered by the Tree Warden, with the following exceptions.

- A. The minimum single trunk diameter to which these provisions shall apply is six inches (6") DBH, not the eight inches (8") specified at Chapter 20 section 31.
- B. Trees on publicly owned land will not be exempted as specified at Chapter 20 section 32(a).
- C. Any plans for tree replacement must have been approved by the Planning Board in consultation with the Tree Warden.

SECTION 10 ENFORCEMENT

10.1 Filing Requirement

Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the right-of-way of a scenic road will require an immediate filing.

10.2 Compliance

If the Planning Board approves a project, the applicant (except for City agencies) may be required to provide a bond to cover the costs of the required work and the protection of resources, unless a bond for the work is required by another City Department.

Any approval not exercise within two (2) years of issue shall be void and shall require a new filing.